Williams was aware of the Court of Appeal's decision in *Najirullah's* case. I imply no criticism because the judgement has never been published and is not readily available.

Here the question is: "What was the accused's age on the 24th March, 1963?" The accused's evidence that he was more or less eighteen years old should presumably, in view of the ruling that the accused should have the benefit of any doubt, be construed in his favour, namely that he was under eighteen. On the other hand there is the learned Chief Justice's opinion that on the 10th July, 1963, the accused looked to be over eighteen years old. This opinion is presumably based on the physical appearance of the accused, a proper matter to be taken into consideration, but not a very reliable guide, the Court thinks, unless the person assessing the age has any specialised knowledge of the people or the race to which the accused belongs. In view of the expression "he looks to be", with what degree of confidence was this opinion held? — as a certainty, or near certainty or as highly probable, or as an impression merely? The issue for the accused is as serious as it could be, and it appears to this Court that in this case there is a reasonable doubt as to the accused's age on the 24th March, 1963. This Court thinks that the safest course is to quash the death sentence and to substitute a sentence of detention during the Governor's pleasure.

Accordingly this Court sets aside the sentence of death passed on the appellant and substitutes therefore a sentence of detention during the pleasure of the Governor.

Order accordingly.

Solicitors:—*Thomas & Co.*

MAMAT v. ABDUL MANAF

[C.A. (Thomson C.J., Barakbah J.A. and Neal J.) August 21, 1963]

[K.L. — F.M. Civil Appeal No. 23 of 1963]

Damages—Personal injury—Leg—Compound fracture of right tibia and simple fracture of right ulna—Pain and suffering and life-long disability not involving invalidism—Standardization of damages.

In this case the respondent, a 40 year old switchboard attendant, was injured as a result of a collision between a motor-cycle which he was riding and a motor-car driven by the appellant. He suffered (a) compound fracture shaft of right tibia at the junction of the upper and middle 1/3rd resulting in a 1 inch shortening and (b) simple fracture right ulna. The learned trial judge found negligence on the part of the appellant and awarded *inter alia* $15,000 general damages. On appeal, on the question of quantum,

Held: (1) the respondent's loss could be comprised under the heads of pain and suffering and a life-long disability not in any way involving invalidism and not in any way affecting earning power but to some extent affecting amenity and the enjoyment of living;

(2) on the facts and circumstances of this case a suitable sum by way of compensation would be $8,500.

COURT OF APPEAL.

P. J. Mooney for the appellant.

H. E. Cashin (*T. M. Yap* with him) for the respondent.

Thomson C.J. (delivering oral judgment): The respondent to this appeal was injured as a result of a collision between a motor-cycle which he was riding and a motor-car driven by the appellant and he sued for damages in negligence.

The trial Judge found negligence on the part of the appellant and awarded $268.52 special damages and $15,000 general damages.

Against that judgment the appellant has now appealed on the question of liability and on the question of quantum of general damages. I think, however, I am right in saying there is no complaint as to the special damages.

On the question of liability I would dismiss the appeal. On this I find it unnecessary to say more than that I agree with what has been said by the learned trial Judge and it is not necessary to repeat that here.

With regard to the question of general damages, the matter is by no means free from difficulty. As I said a few moments ago on the one hand there is much to be said for some sort of standardization of damages; on the other hand the authorities place considerable limits on our powers to deal with an actual award.

In the present case the physical results of what happened were thus described by a medical witness who saw and examined the respondent about three months after the accident:

"he complained of a limp and weakness of the right leg. I found that he had a 1" shortening of the right leg and also deformity at the fracture side. There is anterior bowing of the right lower leg. This caused the inch shortening. The knee and ankle movements are full and I find that the lateral ligament of the right knee is lax. The knee is not as firm as it should be giving a feeling of instability. The fracture of the forearm has united and there is slight limitation of formation and supination but function is good. He will be able to walk a shorter distance than before. He would have an ache in his leg if he walks too far. He can play badminton but not as well as before."

The only other facts that are relevant are that the respondent is 40 years of age, he is employed as a switch-board attendant by the Central Electricity Board and his employment and earning capacity have apparently not been affected in any way. Moreover he is still able

to play the game of badminton at which he is proficient but not with the same vigour and success as before the accident.

His loss can, therefore, be comprised under the heads of pain and suffering and life-long disability not in any way involving invalidism and not in any way affecting earning power but to some extent affecting amenity and the enjoyment of living.

Applying my mind to these facts and given the matter my best attention (and I can do no more) my view is that a suitable sum by way of compensation would be $8,500. It is unnecessary to recapitulate the relevant authorities which have been quoted again and again in this Court. In my view that difference between $8,500 and the amount of $15,000 awarded by the trial Judge is sufficient to justify this Court in interfering.

The result, therefore, is that as regards liability I would dismiss the appeal. As regards damages I would allow it to the extent of reducing the amount of the general damages from $15,000 to $8,500.

Barakbah J.A. and Neal J. concurred.

Order accordingly.

Solicitors:—*Skrine & Co.; Murphy & Dunbar.*

ABDUL MAJID v. PAHANG LIN SIONG MOTOR CO. LTD. & ANOR.

[C.A. (Thomson C.J., Barakbah J.A., Neal J.) August 22, 1963]

[K.L. — F.M. Civil Appeal No. 24 of 1963]

Damages—Personal injury—Hip—Dislocation of—Leg—Fracture—Shortening—Limited flexion of knee—Limitation of extension—Wasting of thigh muscle.

Damages—Assessment of—Application of wrong principle—Misapprehension of fact.

The appellant, a 23 year old itinerant hawker, suffered personal injuries in consequence of a motor vehicle accident. He had a dislocation of the right hip and a fracture of the acetabulum. There was a fracture of the lower end of the right femur with injuries to the right sciatic nerve. His condition at the time of the trial was, *inter alia*, a 1 inch shortening of the right leg and 40% flexion of the right knee.

Liability was admitted and he was awarded $10,000 general damages and $1,870 special damages.

On appeal against the award on general damages,

Held: (1) the amount of damages awarded was inadequate;

(2) there has been a misapprehension of facts in that the learned trial judge had paid insufficient, if any, regard to the question of probable loss of earnings;

(3) damages assessed at $18,000.

Case referred to:—

Scott v. *Musial* [1959] 2 Q.B. 429, 437.

COURT OF APPEAL.

H. E. Cashin (*T. M. Yap* with him) for the appellent.

P. J. Mooney for the respondents.

Thomson C.J. (delivering oral judgment): The appellant in this case suffered personal injuries in consequence of a motor vehicle accident in which he was involved. He sued the owner and the driver of the vehicle in negligence. Liability was admitted and in consequence the only issue at the trial was the quantum of damages. In the event he was awarded special damages amounting to $1,870 and $10,000 general damages.

With regard to the special damages there is no complaint. He has, however, appealed against the amount of the general damages on the ground that these are inadequate.

Before proceeding further I would remind myself of the following observations by Morris L.J. in the case of *Scott* v. *Musial* [1]:—

> "it is recognised that the fixation of damages is so largely a matter of opinion or of impression that differences of calculation or assessment are to be expected. There is, to some extent, an exercise of judicial discretion. It is for this reason that, if three judges of the Court of Appeal consider that the amount of general damages that they would have awarded would have been a figure different from that decided by the trial judge, they will not, for that reason alone, give preference to their own figure; they will only do so if satisfied that the judge has acted on a wrong principle of law or has misapprehended the facts, or has, for those or other reasons, made a wholly erroneous estimate of the damage suffered:"

My own view is that in this case the amount of damages awarded was inadequate. I think, further, there has been a certain amount of misapprehension of facts on the part of the trial Judge and it would, therefore, be proper for this Court to review the award.

The facts are (and as far as I can ascertain they are indisputed facts) that the appellant suffered very severe injuries and in consequence was in hospital for periods amounting in the whole to over eight months. He had a dislocation of the right hip and a fracture of the acetabulum. There was a fracture of the lower end of the right femur with injury to the right sciatic nerve. These were his injuries as described by a medical witness at the time of the accident, which was in December 1960. His condition in consequence of these injuries at the time of the trial in March 1963 was that:—